

REMARKS/ARGUMENTS

The Office Action mailed September 23, 2004 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested.

Claims 14, 17, 19-22 and 24-35 have been canceled, without prejudice or disclaimer of the subject matter contained therein.

The 35 U.S.C. § 102 Rejection

Claims 1-6, 9-10, 13, 15, 18 and 23 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Sawyer¹. This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.²

The Office Action alleges that Sawyer discloses "obtaining accounting start-stop event data from an accounting server" as indicated in claim 1, and cites as evidence of this disclosure "column 5, lines 16-17; column 6, lines 45-47; call start, call over; the processing device 42 associated with billing center 44 keeps connect/disconnect events." Applicant respectfully disagrees.

¹ U.S. Patent 5,828,737

² Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Sawyer discloses a cellular communications system that charges users by how much bandwidth is used during the call. Due to the rising popularity of network-based voice communications (such as Voice over IP), this allows the cellular company to more accurately charge a customer for the network usage the call utilized. As opposed to the billing systems for traditional phone calls (which were based on duration), the bandwidth-charged system allows the user, for example, to have a lower bill if more silence was transmitted during the call (silence utilizes up less bandwidth than sound, see Sawyer, FIG. 3A-3B).

The cited portions of Sawyer disclose nothing about obtaining accounting start-stop event data, nor do they disclose obtaining data from an accounting server. Column 5, lines 16-17 discloses the output of bandwidth measurements from a bandwidth use monitoring device to a processing device. These bandwidth measurements do not represent accounting start-stop data, because it does not contain information regarding when the session began or when it ends, it is simply a measure of bandwidth usage. Additionally, the bandwidth use monitoring device is not an accounting server. By all accounts, it isn't even a server, as its only function appears to be monitoring bandwidth usage. There is no evidence that the bandwidth use monitoring device performs any of the traditional accounting server functions, including the storage of accounting data. Column 6, lines 45-47 disclose the detection of the termination of the call, but from the context it appears that this step is performed by the processing device, not the bandwidth use monitoring device. Therefore, Sawyer does not disclose "obtaining" this "data" from an accounting server, but rather detecting the end of the call itself. There is no indication that information about the time the call ended is stored and kept either. In fact, it would be counterintuitive for Sawyer to do so as it would only add unnecessary inefficiencies. Sawyer does not care about the length of the call, because billing is made by bandwidth. The detection of

the end of the call is only made so the system knows when to stop measuring the bandwidth and produce a bill for the call. There is no necessity to keep track of what time the call ended, just that it did end. Further, there is no reason to store data about either when the call ended or the fact that it ended. Lastly, there is no accounting server storing data. As such, Applicant respectfully submits that Sawyer does not disclose "obtaining accounting start-stop event data from an accounting server."

The Office Action further alleges that Sawyer discloses "obtaining network flow data independent from the accounting start-stop event data from a router within a network through an intermediary netflow collector, the network flow data including data regarding the number and type of packets utilized by the user", indicated in claim 1, and cites as evidence of this disclosure "column 3, lines 61-63; column 4, lines 51-67; the bandwidth data (i.e., amount of data packets transferred over the network) is collected by the a (*sic*) bandwidth user monitoring device (UBMD) 40)." Applicant respectfully disagrees.

In regard to the previous element regarding accounting start-stop data, the Office Action had attempted to correlate the bandwidth use monitoring device with an accounting server. In this element, the Office Action is attempting to correlate the same bandwidth use monitoring device with an intermediary netflow collector. Applicant respectfully suggests that it cannot be both. Furthermore, the element itself indicates that the network flow data is independent from the accounting start-stop event data, which clearly would not be the case in Sawyer. Additionally, the data in Sawyer, if measured by the bandwidth use monitoring device, clearly is not obtained from a router as specified in claim 1.

As such, Applicant respectfully submits that Sawyer cannot disclose claim 1 because Sawyer fails to disclose (1) obtaining start-stop accounting data, (2) obtaining any type of data from an accounting server (3) obtaining any type of data from a router, or (4) obtaining network flow data independent from the accounting start-stop event data. Therefore, Applicant respectfully maintains that claim 1 is in condition for allowance.

As to claims 15, 18, and 23, these claims contain elements similar to that of claim 1, and thus Applicant respectfully maintains that these claims are also in condition for allowance.

As to dependent claims 2-6, 9-10, and 13, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

The 35 U.S.C. § 103 Rejection

Claims 7, 8 and 12 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Sawyer. This rejection is respectfully traversed.

As to dependent claims 7, 8, 11 and 12, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,

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